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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Daniel T Doria,

No. CV-24-08219-PCT-SMB

10 Plaintiff,

ORDER

11 v.

12 SelectQuote Insurance Services,

13 Defendant.

14
15 At issue is SelectQuote Insurance Services’ (“SelectQuote”) Motion to Dismiss
16 (Doc. 17) Plaintiff Daniel T. Doria’s First Amended Complaint (“FAC”) (Doc. 9). Also at
17 issue are Plaintiff’s Motions for Default Judgment (Doc. 19) and to Strike SelectQuote’s
18 Motion to Dismiss (Doc. 22). The Motions are ripe. After reviewing the briefing as well
19 as the relevant case law, the Court will grant SelectQuote’s Motion to Dismiss and deny
20 Plaintiff’s Motions.

21 **I. BACKGROUND**

22 On November 18, Plaintiff filed his initial Complaint (Doc 1) alongside a Motion
23 for Temporary Restraining Order and Order to Show Cause for Preliminary and Permanent
24 Injunctive Relief (Doc. 3). In that Complaint, Plaintiff attempted to assert claims for
25 wrongful termination, breach of contract, failure to pay overtime in violation of the Fair
26 Labor Standards Act (“FLSA”), and violation of the Americans with Disabilities Act. (*See*
27 *generally* Doc. 1.) On November 20, 2024, the Court screened Plaintiff’s Complaint
28 pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) before dismissing that pleading with leave to

1 amend only the FLSA claim. (See Doc. 7.)

2 On November 25, 2024, Plaintiff filed his FAC (Doc. 9) and First Amended Motion
 3 for Preliminary Injunction and Temporary Restraining Order (Doc. 10). In the FAC,
 4 Plaintiff alleged that SelectQuote violated the FLSA when it failed to pay him \$54 in
 5 overtime wages. (Doc. 9 ¶¶ 21–23.) On December 13, 2024, the Court screened Plaintiff's
 6 FAC, issuing an order that found Plaintiff had stated a plausible claim for relief under the
 7 FLSA. (Doc. 12.) In that same Order, the Court denied Plaintiff's request for injunctive
 8 relief. (See *id.*)

9 Apart from this lawsuit, on November 13, 2024, SelectQuote received a notice of
 10 Wage Claim that Plaintiff filed with the Industrial Commission of Arizona ("ICA") Labor
 11 Department (the "Wage Claim"). (Doc. 17-1; Doc. 17-4 ("Gash Decl.") ¶ 5.) The Wage
 12 Claim sought similar relief in the ICA, namely, \$54 for two hours of alleged unpaid
 13 overtime wages. (See Doc. 17-1.) On December 2, 2024, SelectQuote submitted a
 14 payment to the ICA totaling \$49.32, representing the full amount of the Wage Claim less
 15 applicable tax withholdings. (Gash Decl. ¶ 7.) While SelectQuote never admitted fault,
 16 the payment to the ICA resolved Plaintiff's Wage Claim. (*Id.* ¶ 9; Doc. 17-2 (Receipt of
 17 the Wage Claim payment to ICA).) Though SelectQuote maintains that Plaintiff's FLSA
 18 claims lack merit, on February 10, 2025, it made an additional payment of \$3,000 to
 19 Plaintiff to satisfy and resolve the FLSA claim. (Gash Decl. ¶ 11; Doc. 17-3 (Receipt of
 20 the \$3,000 payment to Plaintiff).) In total, SelectQuote has paid Plaintiff \$3,049.32 to
 21 resolve his state and federal overtime wage claims.

22 Now, SelectQuote moves to dismiss Plaintiff's FAC for lack of subject matter
 23 jurisdiction, asserting that the payments in excess of what Plaintiff was owed mooted
 24 Plaintiff's FLSA claim. (See Doc. 17.)

25 **II. LEGAL STANDARD**

26 Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss a
 27 claim for lack of subject-matter jurisdiction. Federal courts are courts of limited
 28 jurisdiction and may only hear cases as authorized by the Constitution or statute. *Kokkonen*

1 *v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A court has subject-matter
 2 jurisdiction over claims that “aris[e] under the Constitution, laws, or treaties of the United
 3 States” and over “civil actions where the matter in controversy exceeds the sum or value
 4 of \$75,000, exclusive of interest and costs, and is between” diverse parties. 28 U.S.C.
 5 §§ 1331, 1332(a). Because our jurisdiction is limited, it is to be presumed that a cause lies
 6 outside of it, and the burden of establishing jurisdiction is on the party asserting it.
 7 *Kokkonen*, 511 U.S. at 377.

8 “*A Rule 12(b)(1) jurisdictional attack may be facial or factual.*” *Safe Air for*
 9 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack “asserts that the
 10 allegations contained in a complaint are insufficient on their face to invoke federal
 11 jurisdiction.” *Id.* In this circumstance, the Court accepts the plaintiff’s allegations as true
 12 and draws all reasonable inferences in the plaintiff’s favor, then “determines whether the
 13 allegations are sufficient as a legal matter to invoke the court’s jurisdiction.” *Leite v. Crane*
 14 *Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). “*A ‘factual’ attack, by contrast, contests the*
 15 *truth of the plaintiff’s factual allegations, usually by introducing evidence outside the*
 16 *pleadings.*” *Id.* In a facial attack, the Court’s inquiry is confined to the allegations in the
 17 complaint, while a factual attack permits the Court to look beyond the complaint. *Savage*
 18 *v. Glendale Union High Sch., Dist. No. 205, Maricopa Cnty.*, 343 F.3d 1036, 1039 n.2 (9th
 19 Cir. 2004).

20 Because subject-matter jurisdiction involves a court’s power to hear a case, it can
 21 never be forfeited or waived. *United States v. Cotton*, 535 U.S. 625, 630 (2002). Therefore,
 22 if the Court determines at any point that it lacks subject-matter jurisdiction, it must dismiss
 23 the action. Fed. R. Civ. P. 12(h)(3).

24 **III. DISCUSSION**

25 **A. Plaintiff’s Motion for Default Judgment and Motion to Strike**

26 SelectQuote’s Motion to Dismiss was filed on February 10, 2025. Plaintiff’s
 27 Motion for Default Judgment was filed on February 11, 2025, “with the intention that it
 28 arrives a day or so after [SelectQuote’s] deadline to file a response.” (Doc. 19 at 2.) As

1 Plaintiff explains, he is “not permitted to electronically file,” and thus he mailed his Motion
 2 for Default. (*Id.*) Plaintiff has asked that the Motion for Default be denied as moot if
 3 SelectQuote “submitted an answer before the deadline.” (*Id.*) Because SelectQuote has
 4 submitted an answer in the form of its Motion to Dismiss, Plaintiff’s Motion for Default
 5 Judgment will be denied as moot.

6 Plaintiff’s Motion to Strike will also be denied. Therein, Plaintiff argues that
 7 SelectQuote’s Motion to Dismiss is “legally insufficient, misleading, and improperly
 8 included in an attempt to prejudice the Court against Plaintiff.” (Doc. 22 at 2.)¹

9 Plaintiff’s arguments include that SelectQuote has “cite[d] cases out of context” and
 10 relied on “selective and misleading” cases. (Doc. 22 at 2–3.) Additionally, Plaintiff asserts
 11 that SelectQuote has included in its Motion “immaterial and impertinent matter.” (Doc. 22
 12 at 3.) As Plaintiff explains, that “matter” includes a “mischaracterization of [Plaintiff’s]
 13 claims and [an] attempt to portray [this] lawsuit as frivolous.” (*Id.* at 4.) To the extent that
 14 SelectQuote has misconstrued the cited case law, the Court is equipped to review those
 15 cases without a separate Motion to Strike a pleading muddying the docket. Moreover, as
 16 to the impropriety of information in SelectQuote’s Motion, Plaintiff merely puts forth
 17 arguments as to why his FAC should not be dismissed. In this regard, Plaintiff’s Motion
 18 to Strike is another bite at the apple, i.e., he is again responding to SelectQuote’s Motion
 19 to Dismiss.

20 Plaintiff also contends that SelectQuote’s Motion contains “extraneous and
 21 irrelevant information.” (Doc. 22 at 4.) The “information” that Plaintiff complains of are
 22 references to the procedural history of this case, i.e., “SelectQuote references your previous
 23 filings (such as the TRO and ADA claims) that are not relevant to the FLSA claim at issue.
 24 These references serve no legitimate legal purpose and appear intended to prejudice the
 25 Court against you.” (*Id.* at 4.) In truth, Plaintiff’s Motion contains extraneous and

26 ¹ Although the Federal Rules, by their plain terms, do not consider motions to dismiss to
 27 be a “pleading” within the ambit of strikable filings, the Court will still consider the
 28 Motion. *See* Fed. R. Civ. P. 7(a) (listing what filings are considered “pleadings,” which
 does not include motions”); *see also In re Tesla, Inc. Sec. Litig.*, 477 F. Supp. 3d 903, 920
 (N.D. Cal. 2020) (“Defendants’ motion to dismiss, however, is not subject to a motion to
 strike because only pleadings can be stricken under Rule 12(f).”).

1 irrelevant information, and his request to strike SelectQuote's Motion is likewise bereft of
 2 merit

3 Plaintiff's Motion to Strike is baseless, and the Court will deny it in its entirety.

4 **B. SelectQuote's Motion to Dismiss**

5 SelectQuote argues that Plaintiff's FLSA claim has become moot because it has
 6 paid him in excess of both the principal amount and damages he could recover if he was
 7 ultimately successful at trial. (Doc. 17 at 5 (citing *Rueling v. MOBIT LLC*, No.
 8 CV-18-00568-PHX-BSB, 2018 WL 3159726, at *2 (D. Ariz. June 28, 2018)).) In
 9 response, Plaintiff argues that the FLSA entitles him to further relief, meaning that
 10 SelectQuote's payment has not mooted his claim. (Doc. 21 at 3–4.) Plaintiff also contends
 11 that SelectQuote's failure to engage in settlement negotiations precludes its unilateral
 12 payment from remedying the harm it caused Plaintiff. (*Id.* at 4.) Plaintiff further argues
 13 that he has other outstanding legal claims aside from the FLSA. (*Id.*)

14 As an initial matter, Plaintiff's only pending count in this suit is an FLSA overtime
 15 claim. (*See* Doc. 9; Doc. 12.) Given that no other claim is before the Court, whether
 16 Plaintiff has other claims against SelectQuote is immaterial to the Court's decision to grant
 17 the Motion to Dismiss.

18 SelectQuote's mootness argument requires the Court to consider whether a live
 19 controversy still exists. If an action or claim no longer presents a live controversy, the
 20 action or claim becomes moot and the court lacks jurisdiction to resolve the underlying
 21 dispute. *See Ruiz v. City of Santa Maria*, 160 F.3d 543, 549 (9th Cir. 1998) (“Generally,
 22 an action is moot when the issues presented are no longer ‘live’ or the parties lack a legally
 23 cognizable interest in the outcome.”) (citation and internal quotation marks omitted).
 24 Mootness is sometimes referred to as “the doctrine of standing set in a time frame.” *U.S.*
 25 *Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980). “A case becomes moot when
 26 interim relief or events deprived the court of the ability to redress the party’s injuries.” *Am.*
 27 *Cas. Co. of Reading, Penn. v. Baker*, 22 F.3d 880, 896 (9th Cir. 1994). When a case
 28 becomes moot, the party loses standing, the court loses jurisdiction, and the matter must be

1 dismissed. *Doe v. Madison School Dist. No. 321*, 177 F.3d 789, 797–98 (9th Cir. 1999).

2 This Court has ruled that an FLSA claim becomes moot when a plaintiff receives
 3 payment covering the relief he would have received through further litigation on multiple
 4 occasions. *Rueling*, 2018 WL 3159726, at *2. In *Rueling*, the defendants wired the
 5 plaintiff \$5,000 after plaintiff brought an FLSA minimum wage claim asserting entitlement
 6 to \$1,740 in damages. *Id.* Accordingly, the Court found that tendering payment in an
 7 amount greater than what the plaintiff could recover under the FLSA mooted the claim and
 8 necessitated dismissal. *See id.*

9 In *Kouba v. Renzenberger, Inc.*, the plaintiff alleged that his employer failed to pay
 10 him overtime wages. No. CIV 10-159 TUC FRZ (GEE), 2012 WL 7149410, at *2 (D.
 11 Ariz. July 6, 2012), *report and recommendation adopted by* 2013 WL 593458 (D. Ariz.
 12 Feb. 7, 2013). After plaintiff filed suit, the employer tendered two checks: one accounting
 13 for the unpaid overtime, and the other providing compensation for statutory damages and
 14 interest. *Id.* In that case, the plaintiff cashed one check, but did not cash the other because
 15 he intended to preserve his right to a jury trial. *Id.* However, the Court concluded that
 16 because the defendant tendered payment for the maximum amount of damages the plaintiff
 17 could receive, the FLSA claim was moot. *Id.* at *2.

18 In *Orozco v. Borenstein*, the plaintiffs alleged that their employer violated the FLSA
 19 by making improper deductions to their paychecks, resulting in their compensation falling
 20 below the required minimum wage. 2012 WL 3762408, at *1 (D. Ariz. Aug. 29, 2012).
 21 After the plaintiffs sued, the employer reimbursed them for the alleged improper
 22 deductions and provided an additional amount to cover liquidated damages. *Id.* Thereafter,
 23 the employer filed, and the Court granted, a motion to dismiss for lack of subject matter
 24 jurisdiction. *Id.* at *1, 4–5.

25 This case is strikingly similar to each of these cases. Here, Plaintiff alleges
 26 SelectQuote failed to compensate him for two hours of overtime wages totaling \$54. (Doc.
 27 9 ¶ 23.) The FLSA provides that a plaintiff may recover the unpaid overtime, an additional
 28 equal amount as liquidated damages, and attorneys' fees and costs. 29 U.S.C. § 216(b).

1 Thus, the maximum Plaintiff could recover at trial based on the unpaid wage and liquidated
 2 damages is \$108. SelectQuote has tendered \$3,049.32 to Plaintiff, and Plaintiff has
 3 accepted such payment, therefore he has recovered more than he could ever receive if this
 4 case continued. (See Doc. 20 at 2 (signifying that Plaintiff accepted the payment and
 5 viewed it as resolving his state law claim).)

6 Likewise, Plaintiff, as a pro se litigant, is not entitled to attorney's fees. "The
 7 Circuits are in agreement, however, on the proposition that a *pro se* litigant who is *not* a
 8 lawyer is not entitled to attorney's fees." *Kay v. Ehrler*, 499 U.S. 432, 435 (1991)
 9 (collecting cases); *see also Gonzalez v. Kangas*, 814 F.2d 1411, 1412 (9th Cir. 1987)
 10 (holding that a non-attorney appellant is not entitled to an award of attorney fees under 42
 11 U.S.C. § 1988). Further, Plaintiff has neither established that he is entitled to costs nor that
 12 his costs would exceed the \$3049.32 he already received from SelectQuote.² Ultimately,
 13 SelectQuote's payment to Plaintiff, in excess of what he could recover at trial, moots his
 14 FLSA claim and divests this Court of subject matter jurisdiction. Therefore, the Court will
 15 grant SelectQuote's Motion to Dismiss (Doc. 17). Fed. R. Civ. P. 12(h)(3).

16 **IV. CONCLUSION**

17 Accordingly

18 **IT IS HEREBY ORDERED** denying Plaintiff's Motion for Default (Doc. 19) and
 19 Motion to Strike (Doc. 22).

20 **IT IS FURTHER ORDERED** granting SelectQuote's Motion to Dismiss (Doc.
 21 17) and **dismissing this case with prejudice**.

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28 ² Plaintiff also asserts that he is entitled to a "judicial determination of liability" but does
 not provide any authority as to what provision of the FLSA authorizes such relief. (See
 Doc. 21.)

IT IS FURTHER ORDERED instructing the Clerk of Court to enter judgment consistent with this Order and terminate this action.

Dated this 21st day of March, 2025.

Honorable Susan M. Brnovich
United States District Judge